

Updates to Retirement Plan Correction Procedures

The Internal Revenue Service (IRS) released [Revenue Procedure \(Rev. Proc.\) 2016-51](#) updates to the Employee Plans Compliance Resolution System (EPCRS) in September 2016 replacing [Rev. Proc. 2013-12](#). While the Rev. Proc. makes small, clarifying updates, it does not significantly change EPCRS's substantive provisions. It incorporates changes described in [Rev. Proc. 2015-27](#) and [Rev. Proc. 2015-28](#). A summary of the key changes include:

- Under Rev. Proc. 2016-37 the requirement to submit a determination letter application when correcting qualification failures that includes a plan amendment no longer applies.
- Fees associated with the Voluntary Correction Program (VCP) are now considered user fees and are no longer detailed in the EPCRS revenue procedure. For VCP submissions made after 2016, refer to the annual Employee Plans user fees noted in [Rev. Proc. 2017-4](#) to determine the current VCP user fees.
- The availability of the IRS Self-Correction Program (SCP) for significant failures has been modified to provide that, for qualified individually designed plans, a determination letter need not be current to satisfy the Favorable Letter requirement.
- Under the IRS Audit Closing Agreement Program (Audit CAP), a reasonable sanction is no longer a negotiated percentage of the maximum payment amount (MPA). Instead, the sanction will be based on a review of the specific facts and circumstances; the MPA amount is now just one of the factors to be considered. Generally, the sanctions will not be less than the fees associated with VCP. The IRS has a new approach to determining applicable sanctions for any late amender failures discovered during an IRS review of a determination letter application.

The Rev. Proc. was effective January 1, 2017; the provisions could not be applied by plan sponsors before that date.

Contributed by [Kimberly Flett](#)